

wife, at different times during the year 1842. That he understood that the said amount was applied in payment of the purchase money of the property mentioned in said deeds, and that part of said amount deponent knows was paid to Vachel Sevier upon that account.

The cause being submitted, the Chancellor delivered the following opinion.]

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THE CHANCELLOR :

Prior to the act of 1835, ch. 380, the principle appears to have been well established that a creditor could not claim the aid of a court of equity in following real estate fraudulently conveyed away by his debtor without first obtaining a judgment at law, nor personal estate thus conveyed without issuing a *fiery facias*. These steps were deemed necessary in order to create a lien upon these two descriptions of property. In the case of personal property, in the language of Chancellor Kent, in *Hendricks vs. Robinson*, 2 *Johns. Ch. Rep.*, 296, "the judgment creditor should be required to make an experiment at law, and bind the property by actually suing out execution." And in *Brinkerhoff vs. Brown*, 4 *Johns. Ch. Rep.*, 677, "if he seeks aid as to real estate he must show a judgment creating a lien." The case of *Birely vs. Staley*, 5 *Gill & Johns.*, 432, was not designed nor does it shake these principles, though there were circumstances there which rendered them inapplicable.

But the second section of the act of 1835, ch. 380, has changed the law in this respect in this state by declaring, "that in a proceeding in equity to vacate a conveyance or other act as fraudulent against creditors, it shall not be necessary for the creditor plaintiff in the cause to obtain a judgment on his demand, in order to the relief sought in the case either in his or her own behalf, or in behalf of any other creditor who shall claim to participate in the benefit of the decree in the cause."

This act of the legislature appears to me to remove the only obstacle to the complainants' title to the aid of the court, and the deeds, therefore, impeached by this bill must be vacated, and the property sold for the benefit of the creditors of William